

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: WESTERN MINNESOTA MUNICIPAL POWER AGENCY	DOCKET NO. WRU-03-19
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ORDER AFFIRMING PROPOSED DECISION AND ORDER

(Issued September 17, 2003)

On April 18, 2003, the Western Minnesota Municipal Power Agency (Western Minnesota) filed with the Utilities Board (Board) an application for waiver of the generating certificate requirements of Iowa Code chapter 476A. Western Minnesota intends to construct a 90 MW electric generating facility for peaking purposes in Audubon County, Iowa, near the communities of Exira and Brayton.

Mr. Neil Schroeter, Mrs. Lavonne Schroeter, Mr. John Nelson, and Mrs. Lucille Nelson filed objections to the waiver request. The Schroeters and Nelsons own farm land that borders the proposed facility. Mr. Trevor Schroeter, the son of the Schroeters' and grandson of the Nelsons', also filed an objection. In addition to these parties, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a response to the waiver request. Consumer Advocate did not object to the waiver request, but recommended that approval of the waiver be conditioned upon Western Minnesota's commitment to successfully negotiate with affected transmission owners resolution of minor impacts on the transmission system as discussed in the waiver application.

The Board assigned the proceedings to an administrative law judge (ALJ) by order issued June 30, 2003. The ALJ conducted a hearing and issued a proposed decision and order granting the waiver, subject to completion of the mitigation of minor impacts on the transmission system, by order issued August 20, 2003.

The Nelsons and Schroeters appealed the proposed decision on September 2, 2003. Consumer Advocate and Western Minnesota each filed responses to the appeal on September 5, 2003. No party requested the opportunity to file briefs or engage in oral argument.

Iowa Code § 476.15(3) provides that on appeal from the proposed decision of a presiding officer, the Board has all the power that it would have had if it had initially conducted the hearing. The Board may reverse or modify any finding of fact based upon the preponderance of evidence and may reverse or modify any conclusion of law that the Board finds is in error.

The Board has thoroughly reviewed the record of this proceeding, including the transcript of hearing. The matters raised on appeal by the Nelsons and Schroeters are primarily factual issues that were thoroughly considered by the ALJ in the proposed decision and order and the preponderance of evidence supports the ALJ's findings. As pointed out by Consumer Advocate in its response to the appeal, it is uncontroverted that Western Minnesota's proposed generating facility is needed by the municipal utilities that purchase from it and that there are 44,400 Iowa customers of 16 Iowa municipal utilities who will directly and substantially benefit from the proposed generating facility. (Tr. 27-28, 30).

In fact, Consumer Advocate correctly noted in its response that if the waiver is denied, there is nothing more that Western Minnesota would need to submit to obtain a generating certificate pursuant to Iowa Code chapter 476A. Thus, a proceeding to grant rehearing and consider denying the waiver would serve no purpose. It would only create delay and add to the cost of the facility, to the detriment of Iowa customers who will benefit from the facility. While it appears Western Minnesota might have done a better job of communicating with the Nelsons and Schroeters in the early stages of the planning process, the Nelsons and Schroeters received notice of these proceedings, actively participated in the proceedings, and were afforded full due process of law. No legal issue was raised in the appeal that would warrant reversal of the ALJ's decision.

Furthermore, the appeal does not raise any new factual issues for the Board's consideration or present arguments that would justify changing the fact-findings in the proposed decision. The proposed decision thoroughly addresses the concerns raised by the Nelsons and Schroeters regarding, among other things, noise studies, ground water level, hunting rights, construction blockage, and an alleged decline in property values. The Board affirms the ALJ's fact-findings in their entirety.

The Nelson's and Schroeter's objection to the proposed decision and order can be summarized as personal opposition to industrial development on property located adjacent to them or, as they said in their appeal, an objection to "losing our way of life." While the Board recognizes that change in any neighborhood or rural area is often difficult to accept, the record demonstrates that any effect of this project

on the adjoining property will be minimal and that reasonable mitigation measures have been adopted by Western Minnesota. Western Minnesota has demonstrated that a waiver of the generating certificate requirements of Chapter 476A is appropriate and that the public interest would not be adversely affected by granting the waiver. This is particularly true in this case, where Western Minnesota demonstrated in the waiver proceeding its full compliance with the siting requirements of the chapter. The proposed decision of the ALJ will be affirmed.

IT IS THEREFORE ORDERED:

The proposed decision and order of the administrative law judge issued on August 20, 2003, is affirmed.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Sharon Mayer
Executive Secretary, Assistant to

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 17th day of September, 2003.